

## CITY MANAGER EMPLOYMENT AGREEMENT

### BETWEEN

### CITY OF FILLMORE & DAVID WAYNE ROWLANDS

This City Manager Employment Agreement ("Agreement"), is made and entered into the 11<sup>th</sup> day of June, 2013 by and between the City of Fillmore of California, a municipal corporation ("City"), and David Wayne Rowlands ("City Manager").

### A G R E E M E N T

#### 1.0 EMPLOYMENT & DUTIES; AB1344

1.1 General Terms. City hereby agrees to employ David Wayne Rowlands as City Manager to perform the functions and duties specified in City's Municipal Code and in the Government Code of the State of California, and to perform such other legally permissible and proper duties and functions as the City Council shall, from time to time, direct or assign. The City Manager agrees to work Monday through Friday from 8:00 a.m. to 5:00 p.m. each week, unless he is using leave or observing a City holiday, even though he understands that city hall is closed every other Friday and that other City employees are not required to work on such Fridays.

1.2 AB 1344. Assembly Bill 1344 was recently enacted as a means to provide greater transparency in local government and institute certain limitations on compensation paid to local government executives. AB 1344 also requires that contracts between a local agencies and its employee include provisions requiring an employee who is convicted of a crime involving an abuse of his office or position to provide reimbursement to the local agency (California Government Code §§ 53243 - 53243.4). These sections are set forth in full in Exhibit "A" attached hereto and incorporated herein.

Accordingly, the parties agree that it is their mutual intent to fully comply with the Government Code sections that are part of AB 1344 and all other applicable law as it exists as of the date of execution of this Agreement and as such laws may be amended from time to time thereafter. Specifically, AB 1344 includes the following Government Code sections which are hereby incorporated by this Agreement:

§53243. Reimbursement of paid leave salary required upon conviction of crime involving office or position.

§53243.1. Reimbursement of legal criminal defense upon conviction of crime involving office or position.

§53243.2. Reimbursement of cash settlement upon conviction of crime involving office or position.

§53243.3. Reimbursement of non-contractual payments upon conviction or crime involving office or position.

§53243.4. Abuse of office or position defined.

City Manager has reviewed, is familiar with, and agrees to comply fully with each of these provisions if any of these provisions are applicable to City Manager, including that City Manager agrees that any cash settlement or severance related to the termination that City Manager may receive from the City shall be fully reimbursed to the local agency if City Manager is convicted of a crime involving an abuse of his or her office or position.

## 2.0 TERM

2.1 Employment Status. City Manager understands and agrees that he is an "at-will" employee serving at the pleasure of City and subject to summary dismissal without any right of notice or hearing, including any *Skelly* hearing. City may terminate the employment of City Manager at any time, with or without cause, upon compliance with the severance provisions set forth in Section 3.0 of this Agreement, upon an affirmative vote of three (3) members of the City Council.

2.2 Term. The term of this Agreement shall begin on August 12, 2013 and shall have a term of two years. This Agreement may be terminated without cause at any time by either party subject to compliance with the requirements of Sections 2.1, 4.0, or 14.0 of the Agreement.

2.3 FLSA Exempt Status. City Manager agrees that his position is that of an exempt employee for the purposes of the Fair Labor Standards Act.

## 3.0 SEVERANCE

### 3.1 Severance Pay.

(a) Except as provided in Sections 3.1(d), below, and 4.0, hereafter, should City elect to terminate this Agreement and the services of City Manager there under, City Manager shall be entitled to a severance payment equal to six (6) month's ("Severance Period") salary as the term "salary" is defined in Section 5.0 hereinafter as and for severance pay for a six (6) month period after termination, but in no case can this amount exceed the limits in Government Code section 53260 or other applicable law as it exists July 1, 2012 and as it may be amended from time to time thereafter. City Manager has reviewed and understands the provisions of this law. Further, in the event City Manager is convicted of a crime involving an abuse of office or position, City Manager shall reimburse the City for any paid leave or cash settlement including severance as provided by in Section 1.2, above; and

(b) City is currently a member of the California Joint Powers Insurance Authority (hereinafter the "CJPIA") which makes available to City Manager an additional six (6) months of compensation and COBRA benefits according to the terms and conditions of the CJPIA'S Special Liability Protection

Program. The terms and conditions of the CJPIA's Special Liability Protection Program ("CJPIA Program") may vary from time to time. The terms and conditions of the CJPIA Program, if any, in effect at the time of termination of City Manager's employment will govern. If, at the time of City's termination of City Manager's employment, City is no longer a member of CJPIA, this paragraph shall not apply, and the benefit, if any, available to City Manager under the CJPIA Program shall be determined at the time of City's termination of City Manager, if at all; and

(c) The parties agree that although City Manager will not be entitled to severance pay if the City Council elects to not extend the term of this Agreement, City Manager may be entitled to compensation and benefits from the CJPIA described in Section 3.1(b) above.

3.2 Payment For Accrued Benefits. Except as provided for in Sections 1.2 and 9.0, upon the termination of this Agreement and the services of City Manager thereunder, City shall pay to City Manager the cash equivalent of all general leave and/or administrative leave then accrued as authorized by the City's benefit resolution for managers. Such cash equivalent shall be calculated by dividing City Manager's then-prevailing annual salary by 2080 hours and by multiplying the resulting quotient by the number of hours accrued (but unused) general leave and/or administrative leave, as the case may be.

3.3 Sole Rights. The severance rights provided in this Section 3.0 shall constitute the sole and only entitlement of City Manager in the event of the termination, other than for cause, or non-extension of this Agreement, and the services of City Manager hereunder, and City Manager expressly waives any and all other rights except as provided herein.

#### 4.0 TERMINATION FOR CAUSE

Should City Manager commit any illegal or unethical act, an act involving personal gain to him, gross insubordination, misfeasance, or malfeasance, City may terminate this Agreement, and the services of City Manager thereunder, and shall have no obligation to pay severance as provided for in Section 3.01 above.

#### 5.0 COMPENSATION AND ANNUAL REVIEWS

5.1 Annual Compensation; Adjustments. City agrees to pay City Manager an annual salary of One Hundred Fifty-Nine Thousand Dollars (\$159,000.00), payable in installments at the same time that the City's other employees are paid, commencing on the effective date of this Agreement.

City and City Manager agree that the affirmative vote of three (3) members of the City Council will be required to effectuate an adjustment in the salary paid to City Manager. In addition, pursuant to Assembly Bill 1344, City and City Manager acknowledge and agree that this Agreement may not provide for an automatic renewal with an automatic compensation increase in excess of a cost-of-living adjustment or a maximum cash settlement in excess of those limits set forth in Government Code §§ 3511.1 and 3511.2.

5.2 Annual Salary Review. City and City Manager agree to conduct a salary review, concurrent with the annual performance evaluation set forth in Section 6.1, to consider providing the City Manager with salary and benefits in addition to those amounts and types of compensation set forth herein.

5.3 Car & Technology Allowance. The City shall provide the City Manager with a car and phone allowance of \$575.00 per month. City Manager shall be responsible for paying all liability, property damage and comprehensive insurance coverage on any vehicle he uses in the performance of his duties as City Manager as well as all purchase, operation, maintenance and repair costs for such vehicle(s). City Manager shall be reimbursed at the IRS standard mileage rate for any business use of his vehicle to a location more than fifty miles one way from the City of Fillmore.

5.4 One Time Expenses Paid By the City. In addition to the salary and benefits described herein, the City agrees to provide the City Manager with the below described not to exceed benefits. The parties agree that if City Manager elects to separate from the City within the original term of this Agreement that City Manager shall reimburse the City in full for the expenses described in Sections (a) and (b) below.

(a) Down Payment Assistance. If City Manager sells the home he currently owns and subsequently elects to purchase a home within the City, within the original term of this Agreement, to the extent that the profit City Manager receives from selling his home does not leave City Manager with enough money to put twenty percent (20%) down on the Fillmore home, City shall provide City Manager a down payment assistance loan in an amount not to exceed the difference between the profit City Manager receives on the sale of his home and twenty percent (20%) of the value of the new home or Seventy Thousand Dollars (\$70,000.00), whichever is less. The loan shall be payable over ten years or sooner, with interest only monthly payments at the then-current LAIF rate, in the first three years, and shall be secured by a Promissory Note and a Deed of Trust recorded against the Fillmore home. After the initial three year period, unless the parties have renegotiated the terms of the loan, the loan payments shall become payable at the then prevailing interest rate. Should City Manager's employment with the City terminate City Manager shall be required to repay the balance of the loan (principal and interest) within six (6) months of his last date of employment.

(b) Moving Expenses. City shall reimburse City Manager for moving documented moving expenses up to a not to exceed amount of Fifteen Thousand Dollars (\$15,000.00). Eligible reimbursement costs include costs associated with moving City Manager, his family, household and personal belongings, including vehicles, to the City. All associated travel costs are to be at economy coach airfare or IRS mileage reimbursable rates up to the maximum total cost described in the first sentence of this Section.

## 6.0 PERFORMANCE EVALUATION

6.1 Annual Evaluation. The City Council shall undertake an annual review of the performance of City Manager utilizing a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by City and City Manager. The process shall, at a minimum, include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. Any written evaluation should be completed and delivered to City Manager within 30 days of the evaluation meeting. Copies of all documentation relating to the City Manager's performance evaluations will be maintained in his personnel and by the City Attorney's Office.

The initial evaluation shall occur on February 2014, six months after City Manager commences working for the City and shall thereafter occur each June.

## 7.0 HEALTH AND WELLNESS

At all times during the term of this Agreement, the City Manager shall receive any benefit increases given by the City to department heads from time to time, other than increases in leave unless the leave increases are specifically made applicable to the City Manager.

7.1 Medical Benefits. Medical benefits shall be under the California Public Employees' Retirement System ("CalPERS") medical program.

7.2 Cafeteria Plan. The City Manager shall receive a Cafeteria Plan Contribution per month in the amount of \$12.50. If City Manager does not take medical, dental or vision insurance through the program offered by the City, City Manager shall receive \$12.50 per month in lieu of this Cafeteria Plan Contribution.

7.3 Health, Dental and Vision Premiums. If the City Manager is enrolled in the City's medical insurance program, the City will contribute \$115.00 per month towards his health premium. All health benefit choices are offered through CalPERS Health. In addition, the City will contribute \$55.00 per month towards his dental premium and \$8.00 per month for his vision premium if City Manager is enrolled in City's programs.

7.4 Health Reimbursement Arrangement. The City shall provide City Manager with a Health Reimbursement Arrangement ("HRA") contribution in the amount of \$413.99 per month which will be deposited into City Manager's HRA account concurrent with the first check of the month. The HRA contribution consists of discretionary allocations which may be used to reimburse City Manager for his costs to enroll in City sponsored programs or to reimburse City Manager for appropriate health care related costs and unused funds will roll over from year to year.

7.5 Additional Benefits. The City shall also contribute the full amount of the following premiums:

- (a) The City shall contribute the full amount of the premium for City Manager for a policy of term life insurance in an amount equal to twice his annual

salary. The parties understand and agree that insurance provider has a cap on the amount of life insurance that may be payable which cap is currently \$325,000.00.

(b) The City shall contribute the full amount of the premium for City Manager for Long-Term Disability insurance.

(c) The City shall contribute the full amount of the premium for Accidental Death and Dismemberment on behalf of City Manager.

## 8.0 RETIREMENT

8.1 PERS. City Manager shall pay his contributions to CalPERS, in the amount of seven percent (7%) of City Manager's salary in effect at the time of the payment, calculated with a two percent (2%) at 62 formula. The payments will be reported as being those of the City Manager and credited to his individual account with PERS.

8.2 Deferred Compensation. The City shall make available to the City Manager a deferred compensation program with Nationwide Retirement Solutions or the ICMA Retirement Corporation Section 457 Deferred Compensation Plan. Said plan shall allow for voluntary contributions by the City Manager and the City shall contribute three percent (3% which is currently \$397.50) into City Manager's account each month. The amounts contributed by the City to this plan shall be subject to the terms and conditions of the plan selected by City Manager.

## 9.0 GENERAL, ADMINISTRATIVE AND OTHER LEAVES

Whenever City Manager will be out of the office for an entire work day, City Manager shall give advance notice of his absence to the City Council and shall appoint an Acting City Manager to act as the City Manager for the duration of his absence.

9.1 General Leave. Upon the Effective Date of this Agreement as described above, City Manager shall be given one hundred sixty (160) hours of general leave per year. At the commencement of his employment with the City, City Manager will receive an advance of 80 hours (10 days) of general leave. After six (6) months, once City Manager has earned back that advance he will begin accruing additional general leave at the rate of 6.154 paid hours per pay period of employment. City Manager may accrue up to a maximum of 750 hours of general leave. General leave in excess of two hundred forty (240) hours may be converted into cash, up to 10 days in one fiscal year. Timesheets are provided before the beginning of each new pay period. City Manager shall complete, sign and deliver a timesheet to the Finance Director on the day before the end of a pay period for approval.

9.2 Administrative Leave. City Manager shall be granted 80 hours of Administrative Leave with pay each fiscal year (July 1 - June 30) with forty (40.0) hours of Administrative Leave given to the City Manager on his first day of work for the City and the other forty (40.0) hours accrued over the course of the year at the rate of 1.5385 hours per pay period. City Manager shall be allowed to carryover a maximum of 16 hours (2 days) of Administrative Leave each fiscal year. City Manager may cash out up to 24 hours (3 days) of leave per fiscal year.

9.3 Family Leave of Absence. The City will grant City Manager leave in accordance with the provisions of the Family and Medical Leave Act of 1993, P.L. 103, Government Code § 12945.2, and/or Labor Code § 233, as applicable.

9.4 Major Illness Leave. The City Manager will be entitled to Major Illness Leave if he has a major illness or off-the-job injury that necessitates employee absence in excess of five (5) consecutive work days as set forth in the Employee Handbook. Unused major illness leave will not be paid on termination of this Agreement.

9.5 Jury Duty. If City Manager is required to serve as a juror in any court of judicial action of this State or of the United States he shall be entitled to a leave of absence with pay during such period of jury duty. City Manager shall appoint an Acting City Manager to act as the City Manager for those dates of the jury duty. City Manager shall be required to report to work if the jury pool is dismissed and more than three (3) hours remain in his regular scheduled workday. City Manager shall be required to pay over to the City any amount he received for jury duty, exclusive of approved travel and subsistence.

9.6 Witness in Court. If City Manager is subpoenaed to appear as a witness in any court of judicial action of this State or of the United States, or before any administrative board or tribunal, on a matter directly related to his officially assigned duties with the City, he shall be granted leave with pay during the time that he is appearing as a witness. City Manager shall appoint an Acting City Manager for the date on which he is to serve as a witness. City Manager shall be required to pay over to the City any amount received for serving as a witness.

9.7 Emergency/Bereavement Leave. On the death or medical emergency of City Manager's spouse, domestic partner as defined by California law, natural or adopted child, step child, grandchild, brother, sister, parent, grandparent, parent-in-law, brother or sister-in-law, step-parent, step-brother, step-sister, or other relative living in the same household, the employee shall be granted emergency/bereavement leave for a period not to exceed one week.

## 10.0 HOLIDAYS

City Manager shall be entitled to the same holidays granted to other employees of the City.

## 11.0 PROFESSIONAL DEVELOPMENT

11.1 Membership. City encourages City Manager's continued professional development and membership and shall provide payment of appropriate related costs for such activities, including membership in the California City Management Foundation and ICMA, as approved by the City Council.

## 12.0 TRAVEL AND MEETING EXPENSES

12.1 Out-of-Town Meetings & Seminars. City agrees to reimburse City Manager the actual cost for registration, travel, lodging, and meals and other necessary expenses incurred by City Manager while attending overnight out-of-town meetings or seminars related to his employment with City. Moreover, to be eligible to receive reimbursement for meals and

lodging for out-of-town meetings or seminars, City Manager must have budgeted funds available for such.

12.2 Local Meetings & Seminars. City agrees to reimburse City Manager the actual cost of registration, meals and other expenses necessarily incurred while in attendance at local meetings or seminars related to his employment with City.

12.3 Incidental Expenses. City agrees to reimburse City Manager the actual cost of those incidental expenses necessarily incurred by City Manager while engaged in the business of City upon the presentation of an appropriate receipt therefore.

12.4 Approval by City Council. To be eligible to receive reimbursement for the memberships, travel and other expenses incurred pursuant to Sections 11.1, 12.1 and/or 12.2 above, City Manager shall obtain advance approval of City Council where practical to do so or, in the event such approval cannot be timely obtained, advance approval from City's Mayor.

### 13.0 BONDING

The City shall bear the full cost of any fidelity or other bonds required of the City Manager under any law or ordinance.

### 14.0 RESIGNATION

In the event that City Manager voluntarily resigns his position with the City, City Manager shall provide a minimum of forty-five (45) days notice unless the parties agree otherwise.

### 15.0 AMENDMENT OF AGREEMENT

City agrees not to change or amend the terms of this Agreement without three (3) affirmative votes of the City Council to do so and agreement by the City Manager as acknowledged in writing.

### 16.0 MUTUAL CONSENT

City and City Manager agree not to revise the annual salary or other benefits herein without the mutual consent of the parties hereto.

### 17.0 INDEMNIFICATION

For the purposes of indemnification and defense of legal actions, City Manager shall be considered an employee of the City and entitled to the same rights and subject to the same obligations as are provided for all other employees of the City as set forth in Sections 825 through 825.6 and Sections 995 through 996.6 of the California Government Code.



## 18.0 GENERAL PROVISIONS

18.1 Entire Agreement. This Agreement represents the entire agreement between the parties and supersedes any and all other agreement, either oral or in writing, between the parties with respect to the employment of City Manager by City and contains all of the covenants and agreements between the parties with respect to that employment. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by either party, or anyone acting on behalf of either party, which are not embodied herein, and that no other agreement, statement or promises not contained in this Agreement shall be valid or binding upon either party.

18.2 Heirs and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the heirs at law and executors of the City Manager.

18.3 Effect of Waiver. The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

18.4 Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

18.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

18.6 Independent Legal Advice. City and City Manager represent and warrant to each other that each has received legal advice from independent and separate legal counsel with respect to the legal effect of this Agreement and, City and City Manager further represent and warrant that each has carefully reviewed this entire Agreement and that each and every term thereof is understood and that the terms of this Agreement are contractual and not a mere recital. This Agreement shall not be construed against the party or its representative who drafted it, or who drafted any portion thereof.

IN WITNESS WHEREOF, the City has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its officers thereunto duly authorized, and the City Manager has signed and executed this Agreement, both in duplicate.

CITY OF FILLMORE:

By: \_\_\_\_\_  
Rick Neal, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Tiffany J. Israel, City Attorney

CITY MANAGER:

\_\_\_\_\_  
David Wayne Rowlands

## **Exhibit A**

### **GOVERNMENT CODE SECTION 53243-53243.4 and 53260(a)**

53243. On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency that provides paid leave salary offered by the local agency to the officer or employee pending an investigation shall require that any salary provided for that purpose be fully reimbursed if the officer or employee is convicted of a crime involving an abuse of his or her office or position.

53243.1. On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency that provides funds for the legal criminal defense of an officer or employee shall require that any funds provided for that purpose be fully reimbursed to the local agency if the officer or employee is convicted of a crime involving an abuse of his or her office or position.

53243.2. On or after January 1, 2012, any contract of employment between an employee and a local agency employer shall include a provision which provides that, regardless of the term of the contract, if the contract is terminated, any cash settlement related to the termination that an employee may receive from the local agency shall be fully reimbursed to the local agency if the employee is convicted of a crime involving an abuse of his or her office or position.

53243.3. On or after January 1, 2012, if a local agency provides, in the absence of a contractual obligation, for any of the payments described in this article, then the employee or officer receiving any payments provided for those purposes shall fully reimburse the local agency that provided those payments in the event that the employee or officer is convicted of a crime involving the abuse of his or her office or position.

53243.4. For purposes of this article, "abuse of office or position" means either of the following:

- (a) An abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority.
- (b) A crime against public justice, including, but not limited to, a crime described in Title 5 (commencing with Section 67) or Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

53260. (a) All contracts of employment between an employee and a local agency employer shall include a provision which provides that regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract. However, if the unexpired term of the contract is greater than 18 months, the maximum cash settlement shall be an amount equal to the monthly salary of the employee multiplied by 18.

### **GOVERNMENT CODE SECTION 3511.1-3511.2**

3511.1. As used in this chapter, the following definitions apply:

(a) "Compensation" means annual salary, stipend, or bonus, paid by a local agency employer to a local agency executive.

(b) "Cost-of-living" means the California Consumer Price Index for Urban Wage Earners and Clerical Workers as calculated by the Department of Industrial Relations.

(c) "Local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission, or agency thereof, or other local public agency.

(d) "Local agency executive" means any person employed by a local agency who is not subject to the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500)), Chapter 5 (commencing with Section 45100) of Part 25 of Division 3 of Title 2 of the Education Code, or Chapter 4 (commencing with Section 88000) of Part 51 of Division 7 of Title 3 of the Education Code, and who meets either of the following requirements:

- (1) The person is the chief executive officer of the local agency.
- (2) The person is the head of a department of a local agency.

3511.2. On or after January 1, 2012, any contract executed or renewed between a local agency and a local agency executive shall not provide for the following:

(a) An automatic renewal of a contract that provides for an automatic increase in the level of compensation that exceeds a cost-of-living adjustment.

(b) A maximum cash settlement that exceeds the amounts determined pursuant to Article 3.5 (commencing with Section 53260) of Chapter 2 of Part 1 of Division 2 of Title 5.